

N6TVWISO

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 WISTRON NEWEB CORPORATION,

4 Plaintiff,

5 v.

22 Civ. 2538 (LJL)

6 GENESIS NETWORKS TELECOM  
7 SERVICES, LLC, and GNET ATC,  
8 LLC,

9 Defendants.

Argument

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10 New York, N.Y.  
11 June 29, 2023  
12 10:05 a.m.

13 Before:

14 HON. LEWIS J. LIMAN,

15 District Judge

16 APPEARANCES

17 LAZARE POTTER GIACOVAS & MOYLE LLP

Attorneys for Plaintiff

18 BY: LAINIE E. COHEN

19 ROBERT A. GIACOVAS

20 VEDDER PRICE P.C.

Attorneys for Defendant Genesis Networks

21 BY: COURTNEY M. BROWN

22 DAVID M. ROWND

N6TVWISO

(Case called)

THE DEPUTY CLERK: Starting with counsel for plaintiff, please state your appearance for the record.

MS. COHEN: Good morning, your Honor.

Lainie Cohen and my partner Robert Giacovas, for the plaintiff.

THE COURT: Good morning.

MR. GIACOVAS: Good morning.

MS. BROWN: Good morning, your Honor.

Courtney Brown and David Rownd, on behalf of Genesis Networks Telecom Services.

THE COURT: Good morning.

All right. I'll note that it doesn't appear that counsel for GNET is here. And I received a letter from counsel for GNET agreeing to the entry of judgment against it, which I'll go ahead and do at the appropriate time. I'm also deeming GNET's opposition to the motion for summary judgment to be withdrawn. I assume there's no objection to that from any party.

MS. COHEN: No objection, your Honor.

MS. BROWN: No, your Honor.

THE COURT: Okay. All right.

So we're here today on plaintiff's motion for summary judgment against Genesis.

Why don't I hear first from plaintiff, then I'll hear

N6TVWISO

1 from defendant, and then I'll hear from plaintiff again. I've  
2 got no particular questions, but I'm sure that they will arise  
3 as I hear you address the Court.

4 MS. COHEN: Thank you, your Honor.

5 I'm sure that your Honor has been through all of this  
6 paper before us, understands this case very well. And I  
7 believe that what really is the issue before the Court here is  
8 not WNC's motion for summary judgment on its claims, but I  
9 believe what the dispute here is is over Genesis' affirmative  
10 defenses. We believe that we have satisfied the burden of  
11 proof on our summary judgment on our claims. There has been a  
12 clear and unambiguous -- sorry. The Court's decision on the  
13 motion to dismiss was very clear; it made a decision,  
14 determination, on the unam --

15 THE COURT: Unambiguous.

16 MS. COHEN: Unambiguous. Sorry. Apologize. Terms of  
17 the contract. A consent was required for the assignment that  
18 was made by Genesis to GNET.

19 THE COURT: Let me ask you this question: Assume that  
20 a consent was not required for the assignment. How would that  
21 affect my decision in this case? It's not a novation.

22 MS. COHEN: Exactly, your Honor. There was no  
23 novation here. Even if some way the Court could find that  
24 consent was not required and that consent was given, which we  
25 wholeheartedly disagree with, we believe that all of the

N6TVWISO

1 evidence shows that there was never an agreement, never a  
2 consent, WNC continued to question whether GNET or Goodman had  
3 the credit in order to obtain insurance. When that was denied,  
4 they specifically obtained additional credit for Genesis,  
5 because they were not interested in agreeing to consenting to  
6 the assignment. Even if they had consented to it, there was no  
7 novation here. And so under clear New York law, Genesis  
8 remained on the hook for its obligations to pay for the goods  
9 that GNET ultimately stopped paying for.

10 And so I believe that with all of the evidence before  
11 the Court, there has been no novation. A novation requires not  
12 just a previously valid obligation; it requires agreement of  
13 all the parties to the new contract and an extinguishment of  
14 the old contract. And it needs a valid new contract. There is  
15 no evidence here that if a new contract was signed between WNC  
16 and GNET or Goodman --

17 THE COURT: Could you infer from the course of conduct  
18 that there was a novation; that the orders came from and were  
19 paid for by GNET, your client accepted the payment from GNET,  
20 at least maybe a jury could find that, wouldn't that be enough  
21 for there to be novation?

22 MS. COHEN: No. Under the case law, it's not, your  
23 Honor. The just conduct could also reflect -- I believe it's  
24 the *Wang v. Chen* case. And that conduct could also reflect the  
25 plaintiff's understanding that the assignor was still obligated

N6TVWISO

1 under the original contract; and that the evidence of WNC  
2 ensuring Genesis, when GNET and Goodman were denied, goes  
3 towards that understanding that WNC was still looking to  
4 Genesis as the obligor under that contract and was entitled to  
5 look to Genesis throughout.

6 The fact that WNC continued to invoice Genesis,  
7 Genesis' name was always on those invoices, it remained on  
8 those invoices, and they continued to send those invoices to  
9 Genesis all the way through the relationship between these  
10 parties. Up until and through the time that GNET stopped  
11 paying, not once did Genesis or anyone else say, Hey, you've  
12 got the wrong name on these invoices.

13 And that brings me to a point about this EDI system  
14 that I wanted to point out to your Honor.

15 Genesis makes a -- excuse me.

16 THE COURT: Take your time.

17 MS. COHEN: Genesis makes a lot of noise about the EDI  
18 system, and that they say that WNC failed to change the  
19 settings or the information in its EDI system; and that because  
20 of that, Genesis and GNET did not realize that WNC still  
21 considered genesis to be the counterparty to this distributor  
22 agreement.

23 I'd like to point your Honor towards some testimony.  
24 When a business relationship started between WNC --

25 THE COURT: So give me the docket number that

N6TVWISO

1 you're -- I assume you're referring to --

2 MS. COHEN: Sure. Apologies.

3 It's Exhibit 9 to the Englander declaration at 69-9.

4 And this is the deposition testimony of Nancy Chu.

5 THE COURT: Okay. Page number?

6 MS. COHEN: Yes. I've got several page numbers for  
7 you. Page 23, 11 through 13; page 32, line 20, through 38,  
8 line 14; page 41, line 6, through 42, line 22; and then there's  
9 a longer passage here, page 160, line 7, through 165, line 15.

10 THE COURT: Okay. And if you're going to read  
11 portions of it, just read slowly so the court reporter --

12 MS. COHEN: Sure.

13 Well, let me explain what the point of the  
14 testimony -- the purpose is.

15 When the business relationship started, the testimony  
16 by WNC's representative was that Genesis -- Genesis' IT  
17 department worked with WNC's IT department to set up this  
18 internal EDI system; and so that all of the information that  
19 WNC required to perform under the terms of the contract were in  
20 the system, and that was a requirement by Genesis. And I  
21 can -- that is -- let me just find -- I think it's 41.

22 I just want to make sure I get the right contract  
23 provision here. I direct your Honor to Exhibit 1 of the  
24 Englander declaration, which is document 69-1, which is the  
25 actual distributor agreement. And on page 21 of 52, paragraph

N6TVWISO

1 11, "Electronic Data Interchange" is the paragraph that's  
2 relevant here. At the request of either distributor or WNC and  
3 the mutual agreement of both parties, the parties shall  
4 exchange orders, payments, acknowledgements, invoices,  
5 remittance notices, and other records, "data" electronically in  
6 place of tangible documents. EDI requirements and transactions  
7 are outlined in Exhibit G.

8 Now, Ms. Chu testified that this was -- the EDI system  
9 was something that Genesis required. Genesis helped WNC set it  
10 up in the beginning of the relationship.

11 Then, later on, after Genesis alleges to have assigned  
12 the distributor agreement to Goodman and GNET, Genesis, through  
13 Mr. Seago, according to his declaration, informed WNC that  
14 there would be a change from Genesis to GNET, where the -- who  
15 would be issuing the purchase orders. Not once did any of  
16 Genesis', Goodman's or GNET's IT people reach back out to WNC  
17 to make sure that WNC's system was properly set up for those  
18 new purchase orders.

19 It was not WNC's responsibility to make sure that the  
20 transition between Genesis and Goodman or GNET went according  
21 to plan and was properly initiated and completed. Those  
22 transition services, as Mr. Seago's declaration states, were  
23 Genesis' responsibility. It was Genesis' responsibility to  
24 make sure that WNC had all of the information that it needed if  
25 this truly was an assignment that WNC was in agreement with and

N6TVWISO

1 was going to continue a relationship with. No one reached out  
2 to WNC. There was not a single piece of evidence. It's not  
3 addressed by Mr. Seago. And instead, Genesis is putting the  
4 onus on WNC to have changed that information, without knowing  
5 what the information they were supposed to have changed it to  
6 was.

7 So I believe that the reliance of Genesis on the EDI  
8 system and the fact that those -- all of those purchase orders  
9 in -- as far as WNC understood, were still coming from Genesis,  
10 and WNC continued to issue the invoices in Genesis' name, with  
11 no understanding -- nothing provided by the other parties to  
12 establish that they should be changing anything in their  
13 system.

14 I'd also like to point out Mr. Seago's declaration,  
15 which is document 77. Mr. Seago provided this declaration.  
16 There is no indication that he is providing this on behalf of  
17 Genesis as a representative of Genesis. I would submit to your  
18 Honor that he could not do that. According to his own  
19 declaration, he no longer was a Genesis employee as of October  
20 2019.

21 And it's in paragraph 3 of his declaration where he  
22 says: On October 2019, after the asset sale transaction  
23 between Genesis and Goodman Networks, which occurred, it's our  
24 understanding, in September of 2019, he formally became an  
25 employee of GNET ATC LLC. GNET is a wholly owned subsidiary of



N6TVWISO

1 Goodman Networks. Then, at some point in 2020, he formally  
2 became an employee of Goodman Networks.

3 So the entire time that the transition services were  
4 going on, the entire time that GNET is maintaining that WNC  
5 knew or should have known that Genesis was no longer the  
6 counterparty to this distributor agreement, Mr. Seago's  
7 testimony is not binding on Genesis. He wasn't an employee of  
8 Genesis, he wasn't speaking on behalf of Genesis. And this  
9 goes to this email -- well, it goes to all of their affirmative  
10 defenses, your Honor.

11 Mr. Seago's testimony is supposed to be in support of  
12 Genesis' affirmative defenses. But Mr. Seago was not an  
13 employee of Genesis at the time. He cannot speak to what  
14 Genesis' understanding or what Genesis relied on at the time  
15 that he read certain emails or he had certain communications  
16 with WNC employees. He was not a Genesis employee, by his own  
17 admission in his declaration.

18 At the same time, however, he was using two different  
19 email addresses. When he communicated with WNC up and through,  
20 I believe -- up and through January 2020, he would use a  
21 Genesis email address, and that is reflective in exhibit -- I  
22 believe it's Exhibit B. I apologize. With WNC's insurance  
23 company he uses Genesis' email address. That's Exhibit B.

24 If you look at the date on those emails on the first  
25 page are January 10th, 2020, and he's using a

N6TVWISO

1 steve.seago@genesis.net.com email address. But then if you  
2 look at his email, Exhibit C, he's emailing as -- wait, there's  
3 an earlier one, I apologize. Exhibit A to his declaration,  
4 December 11, 2019, he's using a Goodman Networks email address  
5 to communicate with Jon Peacock at WNC.

6 So you can see the confusion that there was,  
7 understanding what Mr. Seago's position was, who he worked for.  
8 But according to his declaration, he didn't work for Genesis  
9 after October of 2019, and so nothing in his declaration can be  
10 supportive of Genesis' affirmative defenses.

11 THE COURT: Okay.

12 MS. COHEN: I wanted to address the motion to strike.

13 THE COURT: Okay.

14 MS. COHEN: The entire argument made by Genesis on the  
15 motion to strike is really just a smoke screen. Genesis makes  
16 all kinds of arguments why the declaration of Helen Wang and  
17 some of the testimony of Nancy Chu are not admissible and  
18 should be stricken from the record.

19 What their argument really boils down to, I believe,  
20 is what they state in footnote 2, on page 2 of the reply brief.  
21 And that is that Genesis is really only taking issue with WNC's  
22 unfounded speculation as to GNET's authorization or intent in  
23 making payments to WNC.

24 And I have two points to make on this.

25 The first is it's irrelevant whether GNET was

N6TVWISO

1 authorized to make payments on Genesis' behalf. Who made the  
2 payments or -- during the course of the relationship, because  
3 based on New York law, if there wasn't a novation, Genesis  
4 remained on the hook for that responsibility. So it's  
5 irrelevant whether GNET was making those payments or not.

6 The second thing is that Helen Wang's testimony, they  
7 claim, is irrelevant, inadmissible; she does not have the  
8 personal knowledge to testify to that point that GNET's  
9 authorization or intent in making payments to WNC was given by  
10 Genesis. But that's not the purpose of their testimony, it's  
11 not -- it's not what their testimony says and it's not what the  
12 testimony is important for.

13 THE COURT: It's important for your client's  
14 understanding.

15 MS. COHEN: Exactly, your Honor.

16 Okay. Then I don't need to go into that any further.

17 Also though, but Helen Wang, I mean, she is the head  
18 of finance for WNC's wholly owned subsidiary. She has absolute  
19 personal knowledge. She speaks from experience. She reviewed  
20 all the papers. There's no reason why her testimony should be  
21 stricken.

22 It does go to WNC's knowledge and understanding of who  
23 they were doing business with. And that, again, goes towards  
24 Genesis' affirmative defenses of waiver and estoppel. WNC  
25 wasn't intentionally misleading anyone, and no one was -- well,

N6TVWISO

1 again, Mr. Seago says he was relying on statements by WNC, but  
2 Mr. Seago didn't work for Genesis, so there's no evidence that  
3 Genesis was relying on anything. We believe that Genesis has  
4 not been able to establish even the elements of their  
5 affirmative defenses.

6 One other thing I'd like to say on the affirmative  
7 defenses, and this is also something that was raised by Genesis  
8 in their reply brief on the motion to strike. We believe that  
9 the reply brief is actually -- it's an impermissible surreply.  
10 We did not move to strike; we did not file any objection to it.  
11 Instead, we're addressing it here.

12 There's a footnote, starts on page 6, goes on to page  
13 7. It addresses the latent ambiguity issue in our reply brief  
14 that establishes, we believe, that a latent ambiguity is an  
15 affirmative defense that they were required to raise, never  
16 did, and waived. They tried to distinguish --

17 THE COURT: I don't quite understand your argument  
18 with respect to it being an affirmative defense. Isn't it an  
19 element of your claim that the contract was violated, and don't  
20 you have to establish that the contract means what you say it  
21 means? How is it anything other than -- how is it an  
22 affirmative defense?

23 MS. COHEN: Yes. Well, your Honor, the case that we  
24 cited to, and they say does not state what --

25 THE COURT: Just explain to me logically, just give me

N6TVWISO

1 logic.

2 MS. COHEN: Sure.

3 Rule 8(c) of the federal rules requires any matter  
4 constituting an avoidance or affirmative defense to be pled.

5 THE COURT: Right. I got that.

6 MS. COHEN: And an affirmative defense is defined as a  
7 defendant's assertion raising new facts and arguments that, if  
8 true, will defeat the plaintiff's or prosecution's claim, even  
9 if all allegations in the complaint are true.

10 Their argument about this latent defect -- or, I'm  
11 sorry, this latent ambiguity in the contract, is based on  
12 extrinsic evidence, nothing that was in the complaint. It's  
13 also extrinsic evidence that they had, than they've had for --

14 THE COURT: So would your argument be the same if they  
15 were claiming just an ambiguity and not a latent ambiguity?  
16 Let's say that their argument was that the contract didn't mean  
17 what you say it means because of parol evidence. You're  
18 required to plead that as an affirmative defense? I don't get  
19 it.

20 MS. COHEN: This whole idea of a latent ambiguity is  
21 somewhat -- well, I guess the point is that if Genesis was  
22 putting -- intending to argue that they needed parol evidence  
23 in order to prove -- for the Court to understand what a  
24 contract said, then WNC should have been on notice that that  
25 was part of the discovery that was required. I do believe it

N6TVWISO

1 is an affirmative defense. The case that we cited to does  
2 state that it's an affirmative defense.

3 And what they are doing is they are trying to put  
4 parol evidence before the Court, when they knew all along, they  
5 knew before, that this email that they are talking about was  
6 out there. Your Honor already ruled on the contract --

7 THE COURT: I think I've got your argument. I want to  
8 make sure -- I'm keeping this to an hour, and I want to make  
9 sure that the other side has a full half hour.

10 MS. COHEN: Okay. Yes.

11 THE COURT: So I'll give you five minutes at the end  
12 for any rebuttal.

13 Let me hear from the defendants.

14 MS. COHEN: Thank you, your Honor.

15 MS. BROWN: Good morning, your Honor.

16 Courtney Brown again, on behalf of Genesis.

17 We've brought with us a short demonstrative; it's a  
18 one-slide timeline. We understand -- we've shared this with  
19 opposing counsel. We understand there may be some objections  
20 to that, but --

21 THE COURT: You can hand it up. I'll receive it.

22 MS. BROWN: Thank you, your Honor.

23 THE COURT: Okay. Let me hear from you.

24 MS. BROWN: Thank you, your Honor.

25 Before I get started, briefly, I wanted to address

N6TVWISO

1 WNC's new argument that has not previously been raised before,  
2 that Mr. Seago's declaration should not be considered, and  
3 either is not admissible or cannot be used to support what  
4 Genesis relies on it for simply because of his employment  
5 status.

6 First, WNC has waived this argument. This is  
7 brand-new. We haven't heard of this until today.

8 Second, Mr. Seago has personal knowledge of everything  
9 in his declaration. He was the point person for this business  
10 under the distributor agreement while he worked at Genesis; he  
11 was the point person on the same business when he moved over to  
12 Goodman Solutions. To the extent there are questions about  
13 Genesis' intent or knowledge, or WNC's, for that matter, those  
14 are factual issues that preclude summary judgment.

15 THE COURT: Well, no. I think the point is that to  
16 the extent that he was no longer Genesis' employee, his  
17 testimony might be admissible for other purposes, but it  
18 wouldn't be admissible to show Genesis' understanding of its  
19 obligations. It might be admissible to show GNET's  
20 understanding, but you're asking me to proceed on the  
21 assumption that these two corporations are independent of one  
22 another and should each be given equal dignity. And so if he's  
23 not a representative of Genesis, how can he speak to what  
24 Genesis' understanding would be?

25 MS. BROWN: Understood, your Honor.

N6TVWISO

1           Genesis relied on Mr. Seago to conduct this business  
2 under the distributor agreement and to also handle the  
3 transition over to Goodman Solutions. There were still people  
4 who remained at Genesis, for example, Cathy Kincy, who  
5 submitted a declaration; and Zachary Wryby, who's on some of  
6 the documents that have been submitted.

7           Mr. Seago was in contact with them. And Genesis  
8 relied on Mr. Seago's information that he was conveying and  
9 that he was getting from WNC, that they understood that all  
10 this business had been moved over to GNET, and that Genesis was  
11 no longer involved. And no one else at Genesis would need to  
12 be involved besides relying on Mr. Seago's information that he  
13 provided.

14           Putting all that aside --

15           THE COURT: Maybe you can just confront the big  
16 question lurking out here, which is, is there any evidence to  
17 suggest that there was a novation? And isn't all of the  
18 evidence that I have consistent, at most, with the notion that  
19 there was an assignment pursuant to which GNET could exercise  
20 the rights of Genesis, it could order product, but Genesis  
21 would still be on the hook. That's the big question out there.

22           MS. BROWN: Understood, your Honor.

23           And we do think that there are enough facts in the  
24 record to create a material dispute as to whether there was an  
25 implied novation. Novations can be implied through



N6TVWISO

1 documentation and through conduct. And here we have not only  
2 conduct from WNC in accepting payments from GNET, but also --

3 THE COURT: But that doesn't do anything for you, does  
4 it? If I'm a party to a contract with the plaintiffs here, and  
5 one of the people in the gallery pays on behalf of the  
6 plaintiffs, the plaintiffs are not relieved of their  
7 contractual obligation to me simply because part of their  
8 obligation is satisfied by a third party.

9 MS. BROWN: Yes. That's just one piece of the puzzle,  
10 your Honor.

11 THE COURT: Okay. So what are the other pieces?

12 MS. BROWN: Sure.

13 So Genesis conveyed to WNC that this business had been  
14 transferred over to GNET, and that Genesis was no longer  
15 involved. WNC responded to multiple emails, either saying that  
16 it would correct an issue with a misunderstanding as to who was  
17 making payments and what the nature of the relationship was.  
18 WNC also participated in weekly conference calls with AT&T and  
19 GNET that involved reviewing materials that had been circulated  
20 to WNC, reviewed by WNC, that listed GNET as the vendor.  
21 Genesis was not on -- the document we submitted, Genesis' name  
22 was not on that.

23 THE COURT: Right. Let's indulge that a jury could  
24 find that it was GNET who was ordering the product for GNET's  
25 own benefit. That still wouldn't relieve Genesis of the

N6TVWISO

1 obligations to pay. Genesis would effectively become the  
2 guarantor in that circumstance, and it would be between GNET  
3 and Genesis as to who bore the responsibility. But the  
4 plaintiff here wouldn't be out of luck, would they?

5 MS. BROWN: We think so, your Honor, with the  
6 accumulation of -- at least this creates, again, a factual  
7 dispute as to the numerous statements by WNC in the face of  
8 Genesis' representations that it was not involved in this  
9 business; it was not responsible for payments; it was not  
10 making payments; it was not involved.

11 THE COURT: Again, where does that get you? Because  
12 that's all what would happen if there's an assignment. It  
13 doesn't tell you that there's been a novation; it doesn't tell  
14 you that Genesis has been relieved of the obligation to pay.  
15 It just tells you that the plaintiff can look to two parties  
16 now instead of just the one party.

17 MS. BROWN: Again, your Honor, we think there are  
18 documents in the record that reflect WNC's agreement to the  
19 change in business relationship. I can see I may not be able  
20 to persuade you there, and I don't --

21 THE COURT: No, I mean I'm asking tough questions  
22 because they are on my mind, but you're welcome to try to  
23 persuade me.

24 MS. BROWN: Yes, your Honor.

25 I mean, also the cases relied upon by WNC we think are

N6TVWISO

1 distinguishable on the issue of novation. WNC relies on *Wang*  
2 *v. Chen*. But in that case, the party who was arguing novation  
3 had also filed a counterclaim for breach of that same agreement  
4 that it said it had novated. So that was completely  
5 contradictory.

6 And also, the assignee had been paying the assignor;  
7 so the payments were not going from the assignee to the  
8 plaintiff, they were going -- so the plaintiff didn't -- again,  
9 didn't have knowledge of that situation. And there was no  
10 written -- there were no written documents or written  
11 confirmation that the plaintiff had agreed to discharge that  
12 obligation.

13 Similarly, WNC relies on the *Soire* case. In that  
14 case, again, the original manufacturer didn't even request or  
15 try to obtain consent for the assignment. And there were no  
16 writings that they could point to; there were no documents they  
17 could point to to show that they had been let off the hook.

18 And even if the Court does find that there was no  
19 novation, there are still factual disputes that go to Genesis'  
20 affirmative defenses of election of remedies and estoppel.  
21 It's very clear from the record or, again, at best, for WNC a  
22 factual dispute. WNC did not provide any notice to Genesis  
23 that it viewed the assignment as a breach. WNC was informed of  
24 this. And its witness testified there is no document, no  
25 nothing, for them to notify Genesis there was a breach. WNC

N6TVWISO

1 failed to elect a remedy. It's been maintaining the position  
2 this entire time that the assignment was a breach.

3 THE COURT: So aren't they arguing that there are two  
4 breaches: One is the failure to get consent to the assignment;  
5 the other is a failure to pay. And even if they have waived  
6 with respect to the failure to get -- or elected remedies with  
7 respect to the breach of the assignment provision, in other  
8 words, they can't assert damages from the fact that your client  
9 was the one who was putting in the orders, they haven't waived  
10 or elected remedies with respect to the failure to pay; that as  
11 soon as they cease being paid, they started objecting pretty  
12 vigorously saying, We want to be paid.

13 MS. BROWN: Understood, your Honor.

14 It's completely inconsistent with WNC's behavior the  
15 entire time that it understood that this business was going to  
16 GNET. It wanted to keep this business because it was a key  
17 account. It had its insurance company investigate GNET.

18 THE COURT: Like it had a great deal, because it had  
19 your client ordering the products -- or the other guy ordering  
20 the products and your client not having a novation. So it had  
21 both your client's credit and the other guy's credit. Why  
22 wouldn't you want that, to continue that?

23 MS. BROWN: It does sound like the ideal situation.  
24 But here, WNC tried to have it both ways, and clearly that is  
25 failing for it. Even if there was a failure to elect a remedy,

N6TVWISO

1 which we wholeheartedly agree that there was a failure there,  
2 then just from a perspective -- from an estoppel perspective,  
3 WNC cannot come before the Court, file a complaint, make all  
4 these representations that the assignment was a breach, and  
5 then take the complete opposite position that now -- because  
6 what happened in the beginning, since day one, when Genesis  
7 told WNC there was going to be an assignment, Genesis even  
8 asked for WNC's consent to the assignment. And what did WNC  
9 do? It responded that it didn't need to provide consent.

10 So in the face of that, and in the face of all of the  
11 emails back and forth explaining the transaction, explaining  
12 that this wasn't just assigning the rights or benefits of a  
13 business, this was a sale of substantially all of Genesis'  
14 assets that was going to GNET, WNC at no point expressed any  
15 concerns, objected, said it didn't want to do business with  
16 GNET. And now it's taking the position that it was doing  
17 business with Genesis the whole time; that Goodman employees  
18 were actually Genesis employees, just with a different email  
19 address. It's taking completely contradictory positions, your  
20 Honor, and we don't think that that should be permitted.

21 And again, at best, these issues of intent, these  
22 issues of waiver, these issues of who thought what, when, and  
23 why they were doing these things, these are all material  
24 factual issues that preclude summary judgment.

25 THE COURT: Do you want to walk me through your

N6TVWISO

1 timeline?

2 MS. BROWN: Oh, sure, your Honor.

3 THE COURT: And what I should focus on in it.

4 MS. BROWN: Sure.

5 So, again, as I mentioned, as early as December 2019,  
6 Mr. Seago notified WNC that Genesis has sold its assets,  
7 including the distributor agreement, to Goodman Networks. WNC  
8 told Genesis that it didn't need to provide consent. WNC also  
9 had its insurance company investigate the credit of Goodman and  
10 GNET. And on June 3rd, 2020, WNC told its insured that Goodman  
11 was placing purchase orders that WNC planned to fulfill.

12 So WNC's claim now that it had no knowledge that  
13 Goodman or GNET were involved or that they were placing  
14 purchase orders, is simply not true or subject to a factual  
15 dispute.

16 THE COURT: Can you remind me when the last purchase  
17 order is that is at issue in this case.

18 MS. BROWN: Yes.

19 THE COURT: It's not in your timeline.

20 MS. BROWN: Sure.

21 So there actually is also a factual dispute with  
22 respect to the purchase orders. Because WNC -- I guess taking  
23 a quick step back, WNC set up its own internal EDI system and  
24 this can be seen -- I believe this is it. Yes. So it's  
25 Exhibit 14 to Mr. Englander's declaration. These are what --

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1 WNC is taking the position are the EDI transaction  
2 notifications that the purchase orders at issue were submitted.  
3 And it looks like, according to their records, January 16th,  
4 2021, I believe is the date of the last purchase order.

5 However, your Honor, GNET's records reflect that the  
6 purchase orders were sent from GNET on a different date, and  
7 that's filed as Exhibit F to Mr. Seago's declaration. And with  
8 respect to those purchase orders, I believe the last one is  
9 dated August 12th, 2021.

10 In any event, GNET had been making -- placing purchase  
11 orders and making payments to WNC for over a year. And if you  
12 look at the end of the timeline, as late as October 16th, 2020,  
13 WNC was participating on these weekly planning calls with AT&T  
14 and GNET. And the materials reflected GNET was the vendor.  
15 There is no reference to Genesis anywhere.

16 Things go along smoothly; purchase orders are sent,  
17 fulfilled, paid for.

18 And then September 17th, 2021, is the last payment  
19 made by GNET to W-NeWeb. And WNC doesn't take the position  
20 that Genesis is on the hook until GNET stops paying.

21 And when WNC tried to email only Genesis, Genesis  
22 said, Actually, this person is your contact for accounts  
23 payable, and referred them back to Goodman Solutions.

24 And earlier on, when the transition was happening,  
25 they asked WNC to update the accounts payable --

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1           THE COURT: Let me ask you a question. Why would you  
2 expect Genesis to say to GNET that -- I'm sorry, why would you  
3 expect WNC to say to GNET that Genesis has to pay, when it's  
4 being paid by GNET? Why would Genesis care? Why would they  
5 have any interest in knowing who was paying them for the  
6 purchase orders? Seems like that actually would be almost an  
7 inappropriate question to ask.

8           MS. BROWN: Well, one reason, your Honor, is that WNC  
9 needed insurance coverage for its business so that it could  
10 have a credit --

11           THE COURT: No, I understand the insurance bit.  
12           But you made a point of saying, Well, it's not until,  
13 you know, they ceased being paid that WNC said Genesis is on  
14 the hook. And I would think that that would be the earliest  
15 time that they should reasonably be expected to take that  
16 position; that at any time prior to that, as long as they are  
17 being paid, it would be a matter of indifference to them who's  
18 paying.

19           MS. BROWN: Your Honor, in light of the record of the  
20 insurance company failing to give GNET any coverage whatsoever,  
21 and in light of Genesis telling WNC that it sold this business  
22 and would no longer be involved, for WNC to then choose to do  
23 business with GNET, it took a risk that eventually GNET might  
24 stop paying and, because the business was no longer with  
25 Genesis, that it would not be able to look to Genesis.



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1 THE COURT: Okay. Anything further?

2 MS. BROWN: No. Thank you, your Honor.

3 THE COURT: Anything further from the plaintiff?

4 MS. COHEN: Yes, your Honor.

5 I just want to -- I think this email keeps coming up  
6 that Genesis is relying on as evidence that WNC consented to  
7 the assignment, knew about it, was fine with it. And I'd like  
8 to just direct your attention to it. It's Exhibit C to  
9 Mr. Seago's declaration.

10 What the entire email says is more than what Genesis  
11 is quoting from. And the first sentence -- or the first  
12 paragraph of that email, which is from Sonia Wang to Oscar Lu --  
13 Sonia Wang is in the legal department. This was after Steve  
14 Seago sent an assignment agreement for WNC's signature. This  
15 was approximately a year after the distributor agreement was  
16 purported to have been assigned to Goodman.

17 And so Ms. Wang, what she says is: According to the  
18 distributor agreement, a change of control shall be deemed an  
19 assignment. It's not necessary for WNC to sign this assignment  
20 contract, since Genesis undertakes a change of control. It  
21 only needs a one-way notification from Genesis, Genesis to  
22 prove such change.

23 Then she goes on to say: Usually the acquisition  
24 parties will send a notice of their M&A first, instead of  
25 asking suppliers to consent. In consideration that we could

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1 hardly confirm Genesis' M&A, legal team suggests to obtain a  
2 formal notification with Genesis' signature before WNC signs  
3 the assignment contract.

4 Then, if you look at the next email, Oscar responds to  
5 Jon Peacock, who then forwards that to Mr. Seago at Goodman,  
6 and he says: Please refer WNC legal's feedback as follows:

7 Before signing the consent assignment agreement, WNC  
8 shall have notice from Genesis for illustration of their  
9 company change. Are Genesis acquired by GNET? If yes, is  
10 there any M&A notice from Genesis? Goodman Networks acquired  
11 certain assets from Genesis, and acquired those assets through  
12 a wholly owned subsidiary legally named GNET. Only certain  
13 assets were acquired and not the legal entity of Genesis.

14 It goes on from there. There are questions about what  
15 was actually assigned, information that WNC wanted from Genesis  
16 before they would agree to sign that assignment agreement and  
17 provide a novation on this assignment. And if you look forward  
18 through the rest of the emails that go on, not once does anyone  
19 from Goodman, who this email is with, Mr. Seago at Goodman, not  
20 Genesis, no one ever responds to those questions by legal,  
21 nobody gave them the answers that they needed. They then tried  
22 to get insurance for those two companies. They had no credit.  
23 And so the assignment was never consented to. There was no  
24 novation. There is no evidence in the record of novation.  
25 This email cannot represent a novation by WNC.

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1 THE COURT: All right. I've got the argument. I'll  
2 take it under advisement; try to get you an opinion quickly.

3 MS. COHEN: Thank you, your Honor.

4 THE COURT: Have a good 4th of July, everybody.

5 I would ask the parties to stay around and order a  
6 copy of the transcript from the court reporter.

7 Thank you.

8 \* \* \*